



FONASBA

# BIMCO

## GENERAL AGENCY AGREEMENT

PART I

	1. Date of Agreement
2. Agent (full style and address)  FONASBA Quality Standard Certification <input type="checkbox"/> Yes <input type="checkbox"/> No	3. Principal (full style and address)
4. Commencement date/Period	5. Notice of termination
6. Territory	7. Trade
8. Activities (tick the boxes to apply) (Clause 7 and Annex C)  <input type="checkbox"/> Marketing and sales <input type="checkbox"/> Port agency <input type="checkbox"/> Husbandry agency <input type="checkbox"/> General agency <input type="checkbox"/> Documentation <input type="checkbox"/> Other (specify)	9. Remuneration (See Annex A)
	10. Funding (See Annex B)
	11. Liability cap (Clause 19(i)(b))  Applies only if an amount is stated; if left blank, Clause 19(i)(a) applies.
12. Agent's bank details  Currency: Bank: Address: Account Number: Account Name: IBAN: BIC/SWIFT code:	13. Principal's bank details  Currency: Bank: Address: Account Number: Account Name: IBAN: BIC/SWIFT code:
14. Agent contact details	15. Principal contact details
16. Dispute Resolution (Clause 28 BIMCO Dispute Resolution Clause state (a), (b), (c) or (d); if (c) agreed state Singapore or English law; if (d) agreed, governing law and place of arbitration must be stated)	
17. Additional Clauses, if any	

It is mutually agreed that this Agreement shall be performed subject to the conditions contained herein consisting of Part I, Part II and Annexes A, B and C. In the event of a conflict of conditions, the provisions of Part I shall prevail over those of Part II and Annexes A, B and C to the extent of such conflict but no further.

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Signature and Company Stamp (Agent)	Signature and Company Stamp (Principal)
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**Definitions**

**“Activities”** means the functions specified in Box 8.

**“Agent”** means the party stated in Box 2.

**“Disbursements”** means expenses paid or payable to third parties.

**“Expenses”** means costs incurred by or on behalf of the Agent for the account of the Principal.

**“Funding”** means the terms on which Remuneration will be paid and Disbursements settled.

**“Parties”** means the Agent and the Principal.

**“Period”** means the length of time and/or the project details specified in Box 4.

**“Principal”** means the party stated in Box 3.

**“Remuneration”** means the fee, commission or other sum payable to the Agent for the performance of the agreed Activities.

**“Territory”** means the port(s), place(s) or geographic area specified in Box 6.

**Section 1 Basis of the Agreement**

- 1.** The Agent has agreed to act on behalf of the Principal in the Territory in accordance with this Agreement.
- 2.** This Agreement shall commence on the date stated in Box 4 and continue for the Period stated therein. In the event that no Period is specified, the Agreement shall continue until terminated by either party giving to the other the period of notice specified in Box 5.
- 3.** The Agent will not accept representation of other shipping companies or engage in NVOCC or freight forwarding activities in the Territory, which are in direct competition with the trade specified in Box 7, without prior written consent which shall not be unreasonably withheld.
- 4.** The Principal undertakes not to appoint any other party in the Territory for the Activities set out in Box 8, unless and solely to the extent required to do so by the terms of a charter party or other contract of carriage. In such event, all other Activities under this agreement shall be performed by the Agent.
- 5.** The Principal will remunerate the Agent for the Activities agreed in Box 8 in accordance with Box 9 and/or Annex A (Remuneration).

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6. The Agent may appoint sub-agents subject to prior written approval by the Principal.

**(a)\*** The Agent shall be responsible for any loss or damage to the Principal arising from sub-agents' negligent, reckless or wilful acts or omissions in the discharge of their obligations under this Agreement.

**(b)\*** The Agent shall not be responsible for the negligent acts or defaults of any sub-agents unless the Agent fails to exercise due care in the appointment and supervision of such sub-agent. Notwithstanding the foregoing the Agent shall be responsible for the acts of its subsidiary companies appointed within the context of this Clause.

The Agent shall not be responsible for failure to exercise due care in the appointment of any sub-agent nominated by the Principal.

*\* Subclauses (a) and (b) are alternatives. Strike out the one not to apply. If no choice has been made, Subclause (a) shall apply.*

## **Section 2 Activities**

7. Activities include the following and may be expanded upon in Annex C:

**(a) Marketing and sales**

(i) Undertaking marketing and sales in the Territory by maintaining contact with shippers, consignees, freight forwarders and charterers and keeping the Principal informed of potential business opportunities;

(ii) providing statistics and information reasonably requested by the Principal;

(iii) engaging in public relations activities and participating in any trade association as agreed with the Principal; and

(iv) agreeing a budget with the Principal to enable the Agent to fulfil the agreed scope of representation.

**(b) Port agency**

(i) Arranging for berthing of vessels, loading and discharging of cargo and/or passengers in accordance with local custom and conditions;

(ii) cargo operations: co-ordinating stevedores and terminal operators, reporting to relevant authorities and arranging and checking documentation;

(iii) inward and outward clearance of vessels: making arrangements to permit entry and departure, complying with the requirements of statutory and regulatory authorities and arranging and co-ordinating the provision of port services;

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(iv) keeping the Principal regularly and in a timely manner informed of port and working conditions likely to affect the despatch of the Principal's vessels;

(v) reporting to the Principal the vessel's position and preparing a statement of facts of the call and/or a port log; and

(vi) placing orders on behalf of the Principal for the supply of goods and services.

***(c) Husbandry agency***

(i) Attending the Master and all crew matters, consular requirements, organising medical and dental treatment and supervising crew changes;

(ii) ordering and receiving goods, services, supplies and spare parts for the vessel;

(iii) making arrangements for receiving bunkers;

(iv) arranging and co-ordinating repairs; and

(v) all other activities relating to the day to day running of the vessel.

***(d) General agency***

(i) Co-ordinating all activities of port and/or sub-agents, as set forth in this Agreement, in order to ensure the proper performance of all customary requirements for the operation of the Principal's vessels in the Territory; and

(ii) attending to the Principal's requirements concerning claims handling. All expenses involved with claims handling are for the Principal's account.

***(e) Documentation***

On behalf of the Principal, issuing bills of lading and manifests, delivery orders, certificates and such other documents as may be required.

**8.** All communications, instructions and exchanges between the Parties in connection with arrangements for, and the operation of, Activities shall be in accordance with the Agent's contact details at Box 14 and the Principal's contact details at Box 15.

**Section 3 Finance and Budgets**

**9.** The Agent shall:

(i) collect any monies due to the Principal including, but not limited to, freight, storage, demurrage and terminal handling charges;

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- (ii) check all invoices or vouchers received for services rendered and prepare a proper disbursement account in respect of each voyage or accounting period;
- (iii) encourage authorities, port and terminal operators and service providers to render invoices in a timely manner and take prompt action to obtain any invoices that are delayed without good reason;
- (iv) provide appropriate records of the Principal's financial position, which shall be available for inspection. The costs of such inspection shall be entirely for the Principal's account;
- (v) advise the Principal of all amendments to port tariffs and other charges as they become known;
- (vi) calculate freight and other charges and exercise reasonable skill and care in applying all terms and conditions and agreements;
- (vii) take and pass the benefit on to the Principal of all available discounts;
- (viii) remit to the Principal any monies due at such periodic intervals as may be agreed. All bank charges shall be for the Principal's account. The Agent shall have authority to retain money from the freight collected to cover all past and current Disbursements and Remuneration, subject to providing regular cash position statements to the Principal. In the event of a debit balance, the Principal shall restore Funding to the agreed level but may deduct any amount held by the Agent in credit for a subsequent accounting period; and
- (ix) advise the Principal of the customary credit terms and arrangements. If the Agent is required to grant credit to customers for commercial reasons, the risk in respect of outstanding collections is for the Principal's account unless the Agent has granted credit without the knowledge of the Principal.

Remittances to the Principal shall be paid into the Principal's bank account stated at Box 13. The account details and number may be modified or changed only by written amendment of the Agreement signed by the Parties.

**10.** For the avoidance of doubt, the Agent shall not be required or expected to use or commit its own funds to finance the Principal's interests or obligations.

**11.** The Principal shall advance Funding at such times and in such sums as agreed and set out at Annex B (Funding), required for the fulfilment of the Agent's obligations and to meet Disbursements and Remuneration payable under this Agreement. Funding shall be paid into the Agent's bank account stated at Box 12. The account details and number may be modified or changed only by written amendment of this Agreement signed by the Parties.

**12.** In the event of termination, whether or not due to default of the Agent, all Disbursements and Remuneration outstanding or arising at, or in connection with any Activities being provided at, the time of termination, shall be settled by the Principal.

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**13.** Termination of this Agreement shall be without prejudice to all rights accrued by or between the Parties prior to the date of termination.

**14.** The Agent shall ensure that the Principal's funds are accounted separately from its own.

**15.** Without prejudice to any other right or remedy under this Agreement, if the Principal fails to comply with any of its financial obligations the Agent shall be entitled to:

(i) inform any suppliers, service providers or authorities that the Agent has not been put in funds;

(ii) take any necessary measures to detain the vessel or vessels in port until such funds are received;

(iii) retain any documents that the Agent has in its possession pending receipt of funds; and

(iv) terminate this Agreement with immediate effect by giving written notice to the Principal.

#### **Section 4 Resources and Insurance**

**16.** The Agent shall provide resources necessary for the performance of its Activities under this Agreement.

**17.** Software provided by the Principal for any purpose connected with this Agreement shall remain the Principal's property and shall be used exclusively for the purpose for which it is provided.

#### **18. Insurance**

**(a)** The Agent shall, throughout the duration of this Agreement, maintain adequate and appropriate insurance cover for:

(i) negligent acts or defaults in the performance of its obligations under this Agreement; and

(ii) public liability insurance.

**(b)** The Principal shall, throughout the duration of this Agreement, maintain shipowners' protection and indemnity insurance or charterers' cover, as appropriate. If the Principal does not have such cover, the Agent shall be entitled to terminate this Agreement with immediate effect by giving written notice to the Principal.

**(c)** The Principal and the Agent shall, on the request of the other, provide evidence of such insurance cover.

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**Section 5 Liability**

**19. Liability**

*(i) Liability to Principal*

The Agent shall not be liable to the Principal for any loss, damage, delay or expense of whatsoever nature, whether direct or indirect, (including but not limited to loss of profit arising out of or in connection with detention of or delay to the vessel) and howsoever arising in the course of performance of this Agreement, unless same is proved to have resulted solely from the negligence or wilful default of the Agent or sub-agents if Clause 6(a) applies.

Save where loss, damage, delay or expense has resulted from the Agent's personal act or omission committed with the intent to cause same or recklessly and with knowledge that such loss, damage, delay or expense would probably result, the Agent's liability for each incident or series of incidents giving rise to a claim or claims shall never exceed:

(a)\* a total of ten (10) times the Remuneration specified in Box 9 which shall be deemed earned in any event; or

(b)\* the amount agreed and stated in Box 11.

*\*Subparagraphs (a) and (b) are alternatives. If Box 11 is not completed, subparagraph (a) shall apply.*

*(ii) Himalaya Clause*

It is hereby expressly agreed that no employee of the Agent (including every sub-contractor from time to time employed by the Agent) shall in any circumstances whatsoever be under any liability whatsoever to the Principal for any expense, loss, damage or delay of whatsoever kind arising or resulting directly or indirectly from any act, neglect, or default on its part while acting in the course of or in connection with its employment and, without prejudice to the generality of the foregoing provisions in this Clause 19(ii), every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Agent or to which the Agent is entitled hereunder shall also be available and shall extend to protect every such employee or sub-contractor acting as aforesaid and for the purpose of all the foregoing provisions of this Clause 19 the Agent is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all persons who are or might be its servants or agents from time to time (including sub-contractors as aforesaid) and all such persons shall to this extent be or be deemed to be parties to this Agreement.

**20.** Except to the extent that the Agent would be liable under Clause 19, the Principal hereby undertakes to keep the Agent and its employees, agents and sub-contractors indemnified and to hold them harmless against all actions, proceedings, claims, demands or liabilities whatsoever or howsoever arising which may be brought against them or incurred or suffered by them arising out of or in connection with the performance of this Agreement, and against and in respect of all costs, loss, damage and expenses (including legal costs and expenses on



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a full indemnity basis) which the Agent may suffer or incur (either directly or indirectly) in the course of the performance of this Agreement.

**Section 6 Miscellaneous**

**21.** This Agreement shall terminate forthwith in the event of an order being made or resolution passed for the winding up, dissolution, liquidation or bankruptcy of either party (otherwise than for the purpose of reconstruction or amalgamation) or if a receiver or administrator is appointed, or if it suspends payment, ceases to carry on business or makes any special arrangement or composition with its creditors.

**22.** The Principal shall provide the Agent with procedures and policies to be followed in connection with its duties and functions under this Agreement.

**23.** If anything is done or not done, such shall not constitute a waiver of any rights under this Agreement.

**24.** Neither party shall assign or novate this Agreement without the consent of the other party.

**25.** The provisions of this Agreement are private and confidential. The Agent will treat all information provided by the Principal about its business activities as confidential. The Agent will not disclose such confidential information, without the Principal's consent, either during or after termination of this Agreement.

This obligation will not however extend to information which:

(i) was already or becomes known to the Agent through other sources not subject to such an obligation of confidentiality;

(ii) is or becomes known to the market generally other than as a result of a breach of this obligation; or

(iii) which the Agent is obliged to disclose pursuant to an order of a court or other such authority.

In all cases such obligation of confidentiality shall be deemed to end two years after the expiry or termination of this Agreement.

**26.** Notwithstanding anything in this Agreement, the Agent or the Principal shall not be required to do anything that constitutes a violation of the laws and regulations of any State to which either of them is subject.

**27.** All notices given by either party to the other shall be in writing and sent to the address for that other party set out at Part I of this Agreement.

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A notice may be sent by registered or recorded mail, facsimile, electronically or delivered by hand.

Any notice given under this Agreement shall take effect on receipt by the other party and shall be deemed to have been received:

- (i) if posted, on the seventh (7<sup>th</sup>) day after posting;
- (ii) if sent by facsimile or electronically, on the day of transmission; and
- (iii) if delivered by hand, on the day of delivery,

and in each case proof of posting, handing in or transmission shall be proof that notice has been given, unless proved to the contrary.

**Section 7 Law and Jurisdiction**

**28.** The Parties agree to refer any disputes to arbitration and to incorporate the BIMCO Dispute Resolution Clause 2016 into this Agreement. They have elected the governing law and jurisdiction referred to in Box 16. In the absence of a declared choice, English law and London arbitration shall apply in accordance with Subclause (a) of the BIMCO Dispute Resolution Clause 2016.

## ANNEX A: REMUNERATION

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Signature and Company Stamp (Agent)	Signature and Company Stamp (Principal)
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## ANNEX B: FUNDING

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Signature and Company Stamp (Agent)	Signature and Company Stamp (Principal)
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## ANNEX C: ACTIVITIES

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Signature and Company Stamp (Agent)	Signature and Company Stamp (Principal)
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